

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 24, 2009

JAMES HILL v. TENNESSEE BOARD OF PROBATION AND PAROLE

Direct Appeal from the Chancery Court for Davidson County
No. 07-2142-III Hon. Ellen Hobbs Lyle, Chancellor

No. M2008-00561-COA-R3-CV - Filed May 14, 2009

The petitioner filed Writ of Certiorari, seeking a review of the actions of defendant. The Trial Judge, reacting to defendant's Motions, dismissed the Petition without prejudice on the grounds that petitioner had not complied with Tenn. Code Ann. § 41-21-801, *et seq.*, and had not complied with the requirements of the statutes, viz., 41-21-805 and 41-21-807. On appeal, we affirm.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Chancery Court Affirmed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

James Hill, Tiptonville, Tennessee, *pro se*.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, and Jennifer L. Brenner, Nashville, Tennessee, for appellee, Tennessee Board of Probation and Parole.

OPINION

Petitioner in this case filed a writ of certiorari to review the Tennessee Board of Probation and Parole's action in revoking his parole.

Petitioner alleged that TBOPP had entered into a criminal conspiracy against him and many misstatements of fact in order to justify the revocation.

After the petition was filed, the Trial Court entered an Order requiring petitioner to provide affidavit information pursuant to Tenn. Code Ann. § 41-21-801 *et seq.*, and further ordered petitioner to pay the \$192.50 filing fee or file a pauper's oath and furnish the information required by Tenn. Code Ann. § 41-21-805, etc. Subsequently, petitioner attempted to comply with the Court's Order, but the response did not satisfy all of the requirements set forth in the Court's Order. He did not pay the \$192.50 filing fee and subsequently the Court issued a second Order which stated the petitioner had only partially complied with the Court's previous Order, and stated that petitioner had not filed by affidavit the information required by Tenn. Code Ann. § 41-21-805 and had not paid the filing fee or submitted a trust account statement for the past six months. The Order gave the petitioner a deadline to comply.

The Trial Court then dismissed appellant's petition on the grounds that he failed to comply with either of the Court's previous orders and that he did not pay the filing fee nor supply the Court with a copy of his trust account statements for the previous six months.

Petitioner has appealed and we restate the issue on appeal as to whether the Trial Court properly dismissed petitioner's action without prejudice on the grounds stated by the Trial Judge.

Tennessee Code Ann. § 41-21-805 sets forth the requirements for inmates to properly file claims as paupers in State courts. The statute requires in pertinent part:

41-21-805. Affidavit of inability to pay - Requirements.

(a) Any inmate who filed a claim with an affidavit of inability to pay costs shall file a separate affidavit with the following information:

(1) A complete list of every lawsuit or claim previously filed by the inmate, without regard to whether the inmate was incarcerated at the time any claim or action was filed; and

(2) For each claim or action listed in subsection (a):

(A) The operative facts for which relief was sought;

(B) The case name, case number and court in which the suit or claim was filed;

(C) The legal theory on which the relief sought was based;

(D) The identification of each party named in the action; and

(E) The final result of the action, including dismissal as frivolous or malicious under this part or otherwise.

(b) If the affidavit filed under this section states that a previous suit was dismissed as frivolous or malicious, the affidavit must state the date of the final order affirming

the dismissal.

(c) The affidavit must be accompanied by a current certified copy of the inmate's trust account statement.

Failure to comply with the statute are grounds for dismissal. *See, Brown v. Majors*, 2001 WL 1683768 *4 (Tenn. Ct. App. Dec. 19, 2001). *Also see, Adams v. Tennessee Dep't. Of Correction*, 2001 WL 1574277 *4 (Tenn. Ct. App., May 30, 2007).

Tennessee Code Ann. § 41-21-807 “requires all inmates who bring a civil action or file an appeal *in forma pauperis* to furnish the Court with a certified copy of the institutional account statement, and to pay filing fees in full with installment payments to be withdrawn from the inmate's account when necessary.” *Sweatt v. Tenn. Dep't. Of Corr.*, 99 S.W.3d 112, 114 (Tenn. Ct. App. 2002) (perm. To appeal denied Jan. 27, 2003).

The Trial Court, pursuant to this section, ordered the petitioner to make a partial payment of the filing fee within a certain time, and if the petitioner failed to comply, it was appropriate for the Trial Court to dismiss the petition. *Wallace v. Ten. Dep't. Of Corr.*, 2006 WL 3246104 (Tenn. Ct. App. Nov. 8, 2006); *Freeman v. Tenn. Dep't. Of Probation and Parole*, 2003 WL 1798080 (Tenn. Ct. App. Apr. 7 2003). The record demonstrates that defendant established a proper basis under the cited authorities to enable the Trial Judge to dismiss the petition without prejudice.

We affirm the Trial Court's dismissal of petitioner's petition, and the costs of the cause are assessed to James Hill.

HERSCHEL PICKENS FRANKS, P.J.